IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 252 of 2006.

Date of Decision: 14th November, 2007

M/s Proview Electronic Pvt. Ltd. **Petitioner.**

Versus

Electronic Workers Union Proview Unit. **Respondent.**

Coram

The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting?[1] Yes.

For the petitioner: Mr. Rajnish Maniktala, Advocate.

For the respondent: Mr. Sanjeev Bhushan, Advocate.

V.K. Gupta, C.J. (Oral).

In this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the judgment dated 21st April, 2006 passed by the learned District Judge, Solan in CMA No.11-S/14 of 2005 whereby the aforesaid Civil Misc. Appeal preferred by the petitioner against the order dated 8th July, 2005 passed by the learned Civil Judge (Senior Division), Kasauli in CMA No.38/6 of 2005 (arising out of Civil Suit No.31/1 of 2005) was dismissed and the aforesaid order dated 8th July, 2005 passed by the learned Civil Judge (Senior Division), Kasauli was upheld. The learned Civil Judge (Senior Division) vide the said order dated 8th July, 2005 had granted a temporary injunction in favour of the

[1] Whether the reporters of Local Papers may be allowed to see the judgment?

respondent restraining the petitioner from disposing of, alienating, selling or creating any charge on its moveable or immoveable property till the disposal of the suit. By the dismissal of the appeal vide the impugned judgment dated 21st April, 2006 naturally the aforesaid temporary injunction stood confirmed with the result that it would operate until the disposal of the suit.

The respondent which is a workers' Union, members whereof were/are the employees of the petitioner had filed a Civil Suit in the Court of learned Civil Judge (Senior Division), Kasauli for the grant of permanent prohibitory injunction under Section 38 of the Specific Relief Act, 1963 restraining the defendants in the said suit from disposing of, alienating, selling etc, their immoveable or moveable property and assets to any one without making payment of all the dues to the members of the plaintiff-Union. Paras (3) and (4) of the plaint carried the sum and substance of the charge against the defendants in the suit. These paras read thus:-

> "(3) That the defendants have employed more than 120 employees/persons as workers on various posts in their Company who are the members of the plaintiff union. As far settled law of the land, the defendants are legally bound to pay the wages, bonus and other emoluments/benefits to its employees regularly and non payment of the same amounts to violation of the laws and also amounts to creation of charge on the property of the defendants.

(4) That in the present case the defendants have illegally and without any lawful orders from the competent authorities, locked out the factory since September, 2004 and as such have failed to pay the due wages, bonus, LTA, medical allowance, gratuity and other emoluments/benefits to its employees for the last many months and hence the defendants are in arrears of huge wages, and other benefits of the employees of the plaintiff union. Instead of paying these benefits to the members of the plaintiff union, the defendants have illegally locked out the factory since September, 2004. The union of the plaintiff and its members i.e. the employees of the defendants have requested the defendants, its management and other responsible officials to pay the due wages, bonus, and other dues/benefits to the employees but of no avail."

In para (6) of the plaint, the contention of the plaintiff was spelt out in clear and unequivocal terms. The contention specified that the defendants in the suit have no right to dispose or or alienate the property without making payment of the dues of the members of the plaintiff-Union. Para (6) reads thus:-

"(6) That the defendants have no legal right to dispose of, alienate, sell, remove or transfer any of their property, to anyone, without making payment of all the dues etc. to the members of the plaintiff union and the same is a charge on

> the assets and other properties of the defendants and the workers/members of the plaintiff union have a legal right to recover their dues from the properties of the defendants. As stated above, the defendants are bet upon to sell, dispose of, alienate, remove and transfer its assets and property with the sole intention to deprive the members of the plaintiff union from recovering their legal dues. This act on the part of the defendants is totally wrong and illegal. The defendants were requested to desist from their illegal acts and designs but to no avail. In case the defendants are not restrained from their illegal acts and designs in that event the plaintiff shall suffer irreparable loss and injury which cannot be compensated in terms of money or otherwise as it would be very difficult for the members of the plaintiff union to recover their dues from the defendants and hence their hard earned money would be grabbed and swindled by the defendants."

The suit as is discernible from the title of the plaint was framed as:

> "Suit for permanent Prohibitory Injunction under Section 38 of the Specific Relief Act, 1963 restraining the defendants from disposing of, alienating, selling, removing or transferring or creating any charge or any of its property both moveable and immoveable/assets, to any one, without making payment of all the dues etc. to the members of the plaintiff union as the same is a charge on the assets and other properties of the defendants and the workers/members of the

> plaintiff union have a legal right to recover their dues from the properties of the defendant company known as M/s Proview Electronics Private Limited, Plot No.24, Sector-2, Parwanoo, Tehsil Kasauli, District Solan, H.P. either by themselves or through their agents, servants, officials, attorneys whosoever in any manner whatsoever."

A reference had been made at the relevant point of time by the Labour Commissioner, Government of Himachal Pradesh to the Labour Court for adjudication of an industrial dispute between the parties. It was to the following effect:-

> "Whether the action of the Management of M/s Proview Electronics Pvt. Limited, Plot No.24, Sector-2, Parwanoo, District Solan, H.P. to retrench the services of (103) workmen (List enclosed) on account of closure of the establishment w.e.f. 15.8.2005 without complying with the provisions of Section 25-O of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the aggrieved workmen are entitled to? If yes its legal effects?"

It is in the aforesaid background that, as noticed at the outset the learned trial Court granted temporary injunction in the manner and to the extent mentioned above which order was confirmed by the learned District Judge, Solan.

Two issues have been canvassed before me by Mr. Maniktala, learned counsel appearing for the petitioner. Actually,

only these two issues also arise for consideration in this case. The first issue is whether the subject matter of the suit as brought by the respondent-plaintiff in the Court of Civil Judge (Senior Division), Kasauli amounted to and constituted an industrial dispute. If the subject matter of the said civil suit amounted to an industrial dispute, according to Mr. Maniktala the Civil Court had no jurisdiction to entertain the suit because its jurisdiction in terms of Section 9 of the Code of Civil Procedure was barred by implication inasmuch as it was only the Labour Court which had the jurisdiction to adjudicate upon an industrial dispute. The second issue which Mr. Maniktala canvassed before me was that since the Labour Court also has jurisdiction to grant a temporary injunction, applying the aforesaid principle of bar of jurisdiction of Civil Courts by necessary implication, in the present case the jurisdiction of the Civil Court to grant temporary injunction also stood ousted. Let me deal with both the issues.

Section 2(k) of the Industrial Disputes Act, 1947 defines an "industrial dispute". It reads thus:-

> "(k) 'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

In the case of **The Premier Automobiles Ltd**. vs. **Kamlekar Shantaram Wadke of Bombay and others**, reported in

(1976) 1 SCC 496, dealing with the respective jurisdictions of the Institutions created under the Industrial Disputes Act and the Civil Courts, their Lordships of the Supreme Court observed thus:-

> "9. It would thus be seen that through the intervention of the appropriate government, of course not directly, a very extensive machinery has been provided for settlement and adjudication of industrial disputes. But since an individual aggrieved cannot approach the Tribunal or the Labour Court directly for the redress of his grievance without the intervention of the government, it is legitimate to take the view that the remedy provided under the Act is not such as to completely oust the jurisdiction of the civil court for trial of industrial disputes. If the dispute is not an industrial dispute within the meaning of Section 2(k) or within the meaning of Section 2A of the Act, it is obvious that there is no provision for adjudication of such disputes under the Act. Civil courts will be the proper forum. But where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the civil court. It is plain that he cannot have both. He has to choose the one or the other. But we shall presently show that the civil court will have no jurisdiction to try and adjudicate upon an

> industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In that event civil court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged breach of contract if the contract is one which is recognized by and enforceable under the Act alone."

In para 23 of the same judgment, the principles culled out from para 9 (supra) and elsewhere in the same judgment were thus summed up as under:-

> "23. To sum up, the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus:
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> (1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.
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> (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
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> (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the

suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be."

I have no doubt in my mind, on a bare reading of the contents of the plaint read with the title and the frame of the suit that the claim put forth by the respondent-plaintiff in the Civil Suit did not at all amount to any industrial dispute between the parties because all that the respondent was seeking from the Civil Court was a relief in the nature of a permanent prohibitory injunction in terms of Section 38 of the Specific Relief Act for restraining the defendants in the suit from disposing of the property of the defendants with a view to secure the claim of the members of the plaintiff-Union which claim rested on their demand relating to non-payment of wages etc. and correspondingly to prevent the defeat and frustration of these claims at the hands of the defendants.

It has to be borne in mind and clearly understood that in the aforesaid suit, the plaintiff was not raising any claim about the wages nor was it asking the Civil court to make any adjudication about the maintainability or the extent of such claim relating to wages. Even though a mention was made about the retrenchment of the members of the plaintiff-Union, in the suit the plaintiff was not even asking the Civil Court to do any adjudication

about the legality or otherwise of the retrenchment. The claims relating to wages or any assertion about the retrenchment being illegal etc. undoubtedly would fall within the purview and domain of an "industrial dispute" in terms of Section 2(k) of the Act and, therefore, these clearly and patently were outside the jurisdiction of the Civil Court. All that the plaint was seeking in the aforesaid suit was the protection of a civil right qua the members of its Union with respect to an apprehended, threatened act of the petitioner-defendant with a view to frustrate and defeat the claims of the members of the plaintiff-Union by disposing of and alienating the moveable and immoveable property of the petitioner-defendant. Such a claim and such an assertion by the plaintiff did not amount at all to an industrial dispute and, therefore, the Civil Court alone had the jurisdiction to deal with this matter. Actually, looking to the principles culled out in **Premier Automobiles Ltd**. (supra) it can be very safely said that the Labour Court or the Industrial Tribunal did not at all have any jurisdiction to deal with the subject matter of the present suit. The suit, therefore, in the present form was maintainable in the Civil Court which alone had jurisdiction to entertain the same and dealt with it.

Coming to the second question about the jurisdiction of the Labour Court to grant temporary injunction and, therefore, correspondingly the ouster of the jurisdiction by the Civil Court, Mr. Maniktala has referred to a judgment of the Supreme Court in the case of **The Management Hotel Imperial, New Delhi and others** vs. **Hotel Workers' Union,** reported in AIR 1959 SC 1342.

This judgment in turn is based upon sub-Section (4) of Section 10 of the Industrial Disputes Act which reads thus:-

> "Section 10. .....
> (4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.
> ....."

The expression, "and matters incidental thereto" occurring in sub-Section (4) (supra) is very relevant as well as it is very important. In the aforesaid judgment what had fallen for consideration by their Lordships of the Supreme Court was the issue relating to the grant of temporary injunction by the Labour Court arising out of the suspension orders and the dismissal orders passed by three Hotels qua their employees. As the facts of the case would indicate three Hotels, because of industrial disturbances in their establishments, had issued orders respectively suspending as well as dismissing some of their employees. These employees had challenged the dismissal and the suspension orders and it is in this background that they had asked for the relief of temporary injunction from the Labour Court. The Labour Court had granted temporary injunctions in favour of these employees directing the Hotels (employers) to pay the wages of the

employees, plus a sum of Rs.25/- per month per head in lieu of food till a final decision with respect to their dismissal was taken by the Labour Court. With respect to such employees who were dismissed or suspended, an industrial dispute was indeed in existence and Section 10 of the Act had been invoked. Granting an interim injunction relating to the payment of wages as well as certain sum of money to meet with the employees' requirements of food etc. during the period the suspension or dismissal order subsisted surely was a matter "incidental" to the point of dispute referred to the Labour Court for adjudication by appropriate Government. As is seen in the present case before me the subject matter of the suit before the Civil Court did not either relate to or constitute any industrial dispute. On the contrary the subject matter of the suit was something which fell outside the jurisdiction of the Labour Court. Actually, looking to the subject matter of the suit, it can safely be said that the Labour Court did not have any jurisdiction to grant any injunction and the jurisdiction to grant temporary injunction in this matter vested only in the Civil Court.

No other point was urged or canvassed by Mr. Maniktala.

Based on the reasoning given hereinabove with respect to the aforesaid two points and the fact that both the Courts below have concurrently held that the plaintiff had established a prima facie case in its favour and the balance of convenience was also in favour of the plaintiff, grant of temporary injunction against the petitioner was indeed called for. I see no reason to dis-agree.

The petition is dismissed.

CMP No.506/2006 & CMP No.637/2007.

In view of the dismissal of the main petition, both the applications shall stand dismissed.

14th November, 2007. (V.K. Gupta), C.J.
(tr)